

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

PARSEC, INC.

Employer

and

Case 19-RC-13972

TEAMSTERS LOCAL UNION NO. 174,
affiliated with INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
AFL-CIO¹

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

¹ The name of the union appears as corrected at hearing.

² The filing of briefs was waived.

³ The Employer did not appear at hearing. Prior to the hearing, the Employer was timely served with a subpoena duces tecum requiring the production of books and records relevant to establishing the Board's jurisdiction. Board exhibit 3 in the record consists of a letter dated June 2, 2000, from the Employer's attorney, Raymond D. Neusch, addressed to the hearing officer, in which Neusch states that the Employer admits that it is subject to the Board's jurisdiction. Also included in Board exhibit 3 is a commerce questionnaire signed by Neusch, which shows that the Employer meets all of the Board's statutory and discretionary standards, including receipt of revenues in excess of \$50,000 for sales or performance of services directly to customers outside the State of Washington. Further, record evidence establishes that the Employer derives revenues in excess of \$1 million per year for the performance of services for Burlington Northern and Santa Fe Railroad, an entity engaged in interstate commerce. Moreover, I take administrative notice that the Board has previously asserted jurisdiction over the Employer in prior Case 19-CA-25624. Therefore, I conclude that the Employer is engaged in interstate commerce

3. The labor organization⁴ involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All truck drivers, lift equipment operators, hostlers, and groundmen employed by the Employer at its Seattle, Washington, intermodal facility; but excluding all guards and supervisors as defined by the Act, and all other employees.

The Employer is engaged in intermodal freight handling at a facility located in Seattle, Washington. Specifically, the Employer handles shipping containers for Burlington Northern and Santa Fe Railroad. The Employer did not appear at hearing. Petitioner contends that 74 individuals on a preferential hiring list are eligible voters.

On October 28, 1999, the Region issued complaint in Case 19-CA-25624 against the Employer, alleging a failure to hire/consider for hire certain employees of a predecessor to the Employer, as a means of avoiding a *Burns* successorship. Thereafter, on March 14, 2000, the Employer and Petitioner entered into an oral settlement of all issues raised by the complaint. The non-Board settlement was accepted by Administrative Law Judge Leonard M. Wagman. Subsequently, the parties entered into a written settlement agreement setting forth the terms of the oral agreement.

The agreement provides for the creation of a preferential hiring list naming 74 individuals. The Employer is obliged to offer employment to the listed individuals when it reaches a certain level of employment in relation to the number of lifts⁵ it is projected to perform in any given month. The normal workload is about 14,000 lifts per month, which requires at least 28 full-time employees. A 1,000 lift increase or decrease would entail a respective increase or decrease of two employees. There is no specific evidence in the record herein as to any expectations of any significant increase or decrease in the normal workload in the near future. At the time of the hearing, there were about 30 Unit employees working.

Witnesses testified that there is a high turnover rate among the Employer's employees, that 34 employees quit in 1997, and 33 employees quit in 1998, and that a similar rate of turnover has continued through the present day.

The Board has long held that individuals on a preferential hiring list to remedy an unfair labor practice and who have a reasonable expectancy of future employment are eligible to vote in any representation election conducted by the Board in the relevant unit. *Koehring Co.*, 193 NLRB 513 (1971) (informal settlement); *Toledo World Terminals*, 289 NLRB 670, 713, fn. 70 (1988) (formal finding of discrimination).

and that it will effectuate the purposes of the Act to assert jurisdiction herein. *Tropicana Products*, 122 NLRB 121 (1959).

⁴ Record testimony establishes that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

⁵ Apparently, "lifts" refers to the lifting of a shipping container by crane.

While there is no evidence that the Employer expects any significant increase in its business such that it would require a larger complement of employees, the evidence establishes that the high turnover rate will result in the need to hire replacement employees. Therefore, it appears that some or all of the individuals on the preferential hire list have a reasonable expectation of future employment by the employer.

By the terms of the settlement agreement, the preferential hiring list is divided into three categories. The list in evidence is dated June 5, 2000. The first group consists of 18 individuals who are currently unemployed. The second group consists of 27 individuals who are currently employed by other employers, other than Eagle Systems, the predecessor of the Employer. The third group consists of 29 individuals, listed in reverse order of seniority, currently employed by Eagle Systems.

The eligibility of specific individuals was properly not addressed at hearing. Determination of any particular individual's eligibility requires ascertaining the facts as of the payroll period for eligibility and the election date, a resolution which the Board leaves to post-election proceedings. *Pipe Machinery Co.*, 76 NLRB 247, 249-250 (1948). Therefore, I shall permit the individuals on the preferential hiring list to vote subject to challenge.

There are approximately 114 employees in the unit.

DIRECTION OF ELECTION⁶

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Individuals named on the preferential hiring list established by the settlement agreement in Case 19-CA-25624 may vote subject to challenge. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 174, AFL-CIO.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not

⁶ At hearing, Petitioner contended that the election should be conducted by mail ballot, and was allowed to present evidence in that regard. However, the mechanics of the conduct of the election is an administrative matter on which I will accordingly make a determination at a later time.

received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before June 23, 2000. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted. To speed preliminary checking and the voting process itself, the names must be alphabetized.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by June 30, 2000.

DATED at Seattle, Washington, this 16th day of June, 2000.

/s/ PAUL EGGERT

Paul Eggert, Regional Director
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